

House Engrossed

State of Arizona
House of Representatives
Forty-fifth Legislature
Second Regular Session
2002

CHAPTER 23

HOUSE BILL 2006

AN ACT

AMENDING SECTIONS 32-2124, 32-2135, 32-2136 AND 32-2153, ARIZONA REVISED
STATUTES; RELATING TO THE STATE REAL ESTATE DEPARTMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 32-2124, Arizona Revised Statutes, is amended to
3 read:

4 32-2124. Qualifications of licensees

5 A. Except as otherwise provided in this chapter, the commissioner
6 shall require proof, through the application or otherwise, as the
7 commissioner deems advisable with due regard to the interests of the public,
8 as to the honesty, truthfulness, good character and competency of the
9 applicant, and shall require that the applicant has:

10 1. If for an original real estate broker's license, at least three
11 years' actual experience as a licensed real estate salesperson or real estate
12 broker during the five years immediately preceding the time of application.

13 2. If for an original cemetery broker's license, either a current real
14 estate broker's license, or if the applicant does not have a current real
15 estate broker's license, at least three years' actual experience as a
16 cemetery salesperson or broker or as a licensed real estate salesperson or
17 broker during the five years immediately preceding the time of application.

18 3. If for an original membership camping broker's license, either a
19 current real estate broker's license, or if the applicant does not have a
20 current real estate broker's license, at least three years' actual experience
21 as a licensed membership camping salesperson or broker or as a licensed real
22 estate salesperson or broker during the five years immediately preceding the
23 time of application.

24 4. If for any type of broker's or salesperson's license, not had a
25 license denied within one year immediately preceding application in this
26 state pursuant to section 32-2153 or a similar statute in any other state.

27 5. If for any type of broker's or salesperson's license, not had a
28 license revoked within the two years immediately preceding application in
29 this state pursuant to section 32-2153 or a similar statute in any other
30 state.

31 6. If reapplying for a license that expired more than one year before
32 the date of application, met all current education and experience
33 requirements and retakes the examination the same as if the applicant were
34 applying for the license for the first time.

35 7. If for a real estate, cemetery or membership camping broker's
36 license, other than a renewal application, an equivalent amount of active
37 experience within the immediately preceding five years in the field in which
38 the applicant is applying for the broker's license, as a substitute for the
39 licensed active experience otherwise required in paragraphs 1, 2 and 3 of
40 this subsection. The licensed active experience required may be met if the
41 applicant can demonstrate to the commissioner's satisfaction that the
42 applicant has an equivalent amount of experience in the past five years that,
43 if the applicant had held a license, would have been sufficient to fulfill
44 the licensed experience requirement.

1 B. All applicants other than renewal applicants under section 32-2130
2 for a real estate salesperson's license shall show evidence satisfactory to
3 the commissioner that they have completed a real estate salesperson's course,
4 prescribed and approved by the commissioner, of at least ninety classroom
5 hours, or its equivalent, of instruction in a real estate school certified
6 by the commissioner and have satisfactorily passed an examination on the
7 course. In no case shall the real estate salesperson's course completion or
8 its equivalent be more than ten years before the date of application unless,
9 at the time of application, the commissioner determines in the commissioner's
10 discretion that the applicant has work experience in a real estate related
11 field and education that together are equivalent to the prelicensure
12 education requirement. The commissioner may waive all or a portion of the
13 prelicensure course requirement, other than the twenty-seven hour Arizona
14 specific course, for an applicant who holds a current real estate license in
15 another state.

16 C. All applicants other than renewal applicants under section 32-2130
17 for a real estate broker's license shall show evidence satisfactory to the
18 commissioner that they have completed a real estate broker's course,
19 prescribed and approved by the commissioner, of at least ninety classroom
20 hours, or the equivalent, of instruction in a real estate school certified
21 by the commissioner and have satisfactorily passed an examination on the
22 course. In no case shall the real estate broker's course completion or its
23 equivalent be more than ten years before the date of application unless, at
24 the time of application, the commissioner determines in the commissioner's
25 discretion that the applicant has work experience in a real estate related
26 field and education that together are equivalent to the prelicensure
27 education requirement. The commissioner may waive all or a portion of the
28 prelicensure course requirement, other than the twenty-seven hour Arizona
29 specific course, for an applicant who holds a current real estate license in
30 another state.

31 D. Prior to receiving any license provided for by this chapter, an
32 applicant shall be at least eighteen years of age.

33 E. The commissioner shall ascertain by written, electronic or any
34 other examination method that an applicant for a real estate license has:

35 1. An appropriate knowledge of the English language, including
36 reading, writing and spelling, and of arithmetical computations common to
37 real estate practices.

38 2. At a minimum, an understanding of the general purpose and legal
39 effect of any real estate practices, principles and related forms, including
40 agency contracts, real estate contracts, deposit receipts, deeds, mortgages,
41 deeds of trust, security agreements, bills of sale, land contracts of sale
42 and property management, and of any other areas that the commissioner deems
43 necessary and proper.

44 3. A general understanding of the obligations between principal and
45 agent, the principles of real estate and business opportunity practice, the

1 applicable canons of business ethics, the provisions of this chapter and
2 rules made under this chapter.

3 F. The commissioner shall ascertain by written, electronic or any
4 other examination method that an applicant for a license as a cemetery broker
5 or a cemetery salesperson has:

6 1. Appropriate knowledge of the English language, including reading,
7 writing and spelling, and of elementary arithmetic.

8 2. A general understanding of:

9 (a) Cemetery associations, cemetery corporations and duties of
10 cemetery directors and officers.

11 (b) Plot ownership, deeds, certificates of ownership, contracts of
12 sale, liens and leases.

13 (c) Establishing, dedicating, maintaining, managing, operating,
14 improving, preserving and conducting a cemetery.

15 (d) The provisions of this chapter and rules made under this chapter
16 relating to the organization and regulation of cemeteries and the licensing
17 and regulation of cemetery brokers and cemetery salespersons.

18 3. A general understanding of the obligations between principal and
19 agent, the principles of cemetery practice and the canons of business ethics
20 pertaining to the operation of cemeteries and the sale of cemetery property.

21 G. The commissioner shall ascertain by written, electronic or any
22 other examination method that an applicant for a license as a membership
23 camping broker or a membership camping salesperson has:

24 1. An appropriate knowledge of the English language, including
25 reading, writing and spelling, and of elementary arithmetic.

26 2. A general understanding of:

27 (a) The general purposes and legal effect of contracts and agency
28 contracts.

29 (b) Establishing, maintaining, managing and operating a membership
30 campground.

31 (c) The provisions of this chapter and rules adopted under this
32 chapter relating to the organization and regulation of membership campgrounds
33 and the licensing and regulation of membership camping brokers and membership
34 camping salespersons.

35 3. A general understanding of the obligations between principal and
36 agent and the canons of business ethics pertaining to the operation and
37 promotion of membership campgrounds.

38 H. No renewal applicant for a real estate, cemetery or membership
39 camping broker's or salesperson's license shall be required to submit to an
40 examination if the application is made within twelve months after the license
41 expires and the license is not cancelled, terminated or suspended at the time
42 of application.

43 I. The examination for a broker's license shall be more exacting and
44 stringent and of a broader scope than the examination for a salesperson's
45 license.

1 J. An applicant for a real estate salesperson's or broker's license
2 who currently holds at least an equivalent license in another state may be
3 exempt from taking the national portion of the real estate examination if the
4 applicant can demonstrate having previously passed a national examination
5 WITHIN THE PAST FIVE YEARS that is satisfactorily similar to the one
6 administered by the department.

7 K. Identification of each applicant whose licensing requirement was
8 allowed to be met by an equivalent alternative pursuant to this section shall
9 be included in the annual performance report presented by the board to the
10 governor pursuant to section 32-2104.

11 L. An applicant for an original real estate salesperson's license,
12 after completion of the requirements of subsection B of this section and
13 before activation of the person's license, shall provide certification to the
14 department evidencing completion of six hours of instruction in real estate
15 contract law and contract writing. This instruction shall include
16 participation by the applicant in the drafting of contracts to purchase real
17 property, listing agreements and lease agreements.

18 M. The commissioner shall not issue a license to a person who has been
19 convicted of a felony offense and who is currently incarcerated for the
20 conviction, paroled or under community supervision and under the supervision
21 of a parole or community supervision officer or who is on probation as a
22 result of the conviction.

23 Sec. 2. Section 32-2135, Arizona Revised Statutes, is amended to read:

24 32-2135. Real estate schools; courses of study; instructors;
25 certification

26 A. Before offering a course of study towards completion of the
27 education requirement for real estate licensure or renewal of licensure, a
28 school shall obtain from the commissioner a certificate of approval to
29 operate a school. A school shall also obtain a certificate of course
30 approval for each course offered for credit. Each school is responsible for
31 the content of any course it offers.

32 B. Each approved school shall issue a certificate of real estate
33 course attendance to each person who completes an approved prelicensure or
34 continuing education course. An applicant for renewal of licensure as
35 provided by section 32-2130 shall ~~certify to the commissioner that the~~
36 ~~applicant has attended~~ FILE A COPY OF THE CERTIFICATES ISSUED BY THE SCHOOL
37 WITH THE COMMISSIONER SHOWING the number of CREDIT hours of attendance and
38 course of study required for renewal. ~~Each licensee shall keep in the~~
39 ~~licensee's possession for five years any certificate of course attendance for~~
40 ~~a course that the licensee has certified to the commissioner under this~~
41 ~~subsection.~~

42 C. The commissioner may withdraw or deny certification or approval of
43 real estate schools, educational courses or real estate instructors for any
44 acts inconsistent with the requirements of this chapter, including:

1 1. The commission of or the failure to report a violation by an
2 approved school or instructor of any provision of this chapter or rules
3 adopted pursuant to this chapter.

4 2. Improper certification of student attendance or performance.

5 3. Any act that is grounds for discipline under section 32-2153.

6 4. Teaching information or using course materials that have not been
7 approved by the commissioner.

8 5. Failing to attend any continuing education course required by the
9 commissioner.

10 6. Filing any false or misleading application, report or documentation
11 with the department.

12 D. A real estate school, through any owner, director, administrator,
13 instructor or other agent, shall not:

14 1. Offer a course of study for credit that is not approved by the
15 department.

16 2. Promote or advertise the school using false or misleading
17 statistics or testimonials or any other form of deceptive advertisement.

18 E. The commissioner may determine minimal requirements for approving
19 educational courses and for approving instructors to teach individual
20 educational courses.

21 F. At least thirty days before holding a course of study for
22 completion of the education requirements leading to licensure of real estate
23 applicants or for license renewal requirements, an application for a
24 certificate of course approval must be filed with the department. Course
25 approval shall be for a period of at least two years from the date the course
26 was first approved for the school making application to offer the course, if
27 the contents of and instructors for the course remain
28 substantially unchanged. For a currently approved course, the school shall
29 submit notice to the department at least fourteen days prior to holding the
30 course to permit the department to monitor the course.

31 G. The department shall approve for continuing education credit any
32 course of study proposed by a real estate school if the course satisfies the
33 commissioner's requirements and is held in this state. If the school
34 proposes to hold a course outside this state, at the discretion of the
35 commissioner the school shall either:

36 1. Provide the department with a videotape or videotapes of the
37 course.

38 2. Make arrangements that are approved by the department for
39 monitoring the course.

40 Sec. 3. Section 32-2136, Arizona Revised Statutes, is amended to read:
41 32-2136. Broker management clinic

42 A. The department shall determine the instructor qualifications for
43 teaching broker management clinics and the course content of broker
44 management clinics for persons required to attend these clinics pursuant to
45 subsection C of this section.

1 B. A broker management clinic shall include instruction on department
2 audits and on the obligations and responsibilities of designated brokers. A
3 broker management clinic shall address record keeping requirements, trust
4 fund accounts, advertising and promotions, listing agreements, contracts,
5 fiduciary duties, material disclosures, department investigations and
6 employee supervision and broker responsibilities. A broker management clinic
7 may be designed to address property management activities or sales
8 activities, or both.

9 C. An applicant for an original real estate broker's license shall
10 attend a broker management clinic before activating the license. A broker
11 shall attend a broker management clinic before becoming a designated broker,
12 unless the broker has attended a broker management clinic during the broker's
13 ~~current licensing period~~ PRECEDING TWENTY-THREE MONTHS. All active
14 designated real estate brokers shall attend a broker management clinic once
15 during every two year licensing period after their initial attendance.

16 D. Attendance at a broker management clinic constitutes three
17 clock-hours of real estate oriented education pursuant to section 32-2130,
18 subsection A.

19 Sec. 4. Section 32-2153, Arizona Revised Statutes, is amended to read:

20 32-2153. Grounds for denial, suspension or revocation of
21 licenses; letters of concern; provisional license;
22 retention of jurisdiction by commissioner;
23 definitions

24 A. The commissioner may suspend or revoke a license, deny the issuance
25 of a license, ISSUE A LETTER OF CONCERN TO A LICENSEE, issue a provisional
26 license or deny the renewal or the right of renewal of a license issued under
27 the provisions of this chapter if it appears that the holder or applicant,
28 within five years immediately preceding, in the performance of or attempt to
29 perform any acts authorized by the license or by this chapter, has:

30 1. Pursued a course of misrepresentation or made false promises,
31 either directly or through others, whether acting in the role of a licensee
32 or a principal in a transaction.

33 2. Acted for more than one party in a transaction without the
34 knowledge or consent of all parties to the transaction.

35 3. Disregarded or violated any of the provisions of this chapter or
36 any rules adopted by the commissioner.

37 4. Knowingly authorized, directed, connived at or aided in the
38 publication, advertisement, distribution or circulation of any material false
39 or misleading statement or representation concerning the licensee's business
40 or any land, cemetery property, subdivision or membership campground or
41 camping contract offered for sale, in this or any other state.

42 5. Knowingly used the term "real estate broker", "cemetery broker" or
43 "membership camping broker" without legal right to do so.

44 6. Employed any unlicensed salesperson or unlicensed associate broker.

1 7. Accepted compensation as a licensee for the performance of any of
2 the acts specified in this chapter from any person other than the licensed
3 broker to whom the licensee is licensed, the licensed professional
4 corporation of which the licensee is an officer and shareholder or the
5 licensed professional limited liability company of which the licensee is a
6 member or manager.

7 8. Represented or attempted to represent a broker other than the
8 broker to whom the salesperson or associate broker is licensed.

9 9. Failed, within a reasonable time, to account for or to remit any
10 monies, to surrender to the rightful owner any documents or other valuable
11 property coming into the licensee's possession and that belongs to others,
12 or to issue an appraisal report on real property or cemetery property in
13 which the licensee has an interest, unless the nature and extent of the
14 interest are fully disclosed in the report.

15 10. Paid or received any rebate, profit, compensation or commission in
16 violation of this chapter.

17 11. Induced any party to a contract to break the contract for the
18 purpose of substituting a new contract with the same or a different
19 principal, if the substitution is motivated by the personal gain of the
20 licensee.

21 12. Placed a sign on any property offering it for sale or for rent
22 without the written authority of the owner or the owner's authorized agent.

23 13. Solicited, either directly or indirectly, prospects for the sale,
24 lease or use of real property, cemetery property or membership camping
25 contracts through a promotion of a speculative nature involving a game of
26 chance or risk or through conducting lotteries or contests that are not
27 specifically authorized under the provisions of this chapter.

28 14. Failed to pay to the commissioner the biennial renewal fee as
29 specified in this chapter promptly and before the time specified.

30 15. Failed to keep an escrow or trust account or other record of funds
31 deposited with the licensee relating to a real estate transaction.

32 16. Commingled the money or other property of the licensee's principal
33 or client with the licensee's own or converted that money or property to the
34 licensee or another.

35 17. Failed or refused upon demand to produce any document, contract,
36 book, record, information, compilation or report that is in the licensee's
37 possession or that the licensee is required by law to maintain concerning any
38 real estate, cemetery or membership camping business, services, activities
39 or transactions involving or conducted by the licensee for inspection by the
40 commissioner or the commissioner's representative.

41 18. Failed to maintain a complete record of each transaction which
42 comes within the provisions of this chapter.

43 19. Violated the federal fair housing law, the Arizona civil rights law
44 or any local ordinance of a similar nature.

1 20. Tendered to a buyer a wood infestation report in connection with
2 the transfer of residential real property or an interest in residential real
3 property knowing that wood infestation exists or that the wood infestation
4 report was inaccurate or false as of the date of the tender or that an
5 inspection was not done in conjunction with the preparation of the wood
6 infestation report.

7 21. As a licensed broker, failed to exercise reasonable supervision
8 over the activities of salespersons, associate brokers or others under the
9 broker's employ or failed to exercise reasonable supervision and control over
10 the activities for which a license is required of a corporation, limited
11 liability company or partnership on behalf of which the broker acts as
12 designated broker under section 32-2125.

13 22. Demonstrated negligence in performing any act for which a license
14 is required.

15 23. Sold or leased a property to a buyer or lessee that was not the
16 property represented to the buyer or lessee.

17 24. Violated any condition or term of a commissioner's order.

18 25. Signed the name of another person on any document or form without
19 the express written consent of the person.

20 B. The commissioner may suspend or revoke a license, deny the issuance
21 of a license, ISSUE A LETTER OF CONCERN TO A LICENSEE, issue a provisional
22 license or deny the renewal or the right of renewal of a license issued under
23 the provisions of this chapter when it appears that the holder or applicant
24 therefor has:

25 1. Procured or attempted to procure a license under the provisions of
26 this chapter for himself THE HOLDER OR APPLICANT or another by fraud,
27 misrepresentation or deceit, or by filing an original or renewal application
28 which is false or misleading.

29 2. Been convicted in a court of competent jurisdiction in this or any
30 other state of a felony or of any crime of forgery, theft, extortion,
31 conspiracy to defraud, a crime of moral turpitude or any other like offense.

32 3. Made any substantial misrepresentation.

33 4. Made any false promises of a character likely to influence,
34 persuade or induce.

35 5. Been guilty of any conduct, whether of the same or a different
36 character than specified in this section, which constitutes fraud or
37 dishonest dealings.

38 6. Engaged in the business of a real estate, cemetery or membership
39 camping broker or real estate, cemetery or membership camping salesperson
40 without holding a license as prescribed in this chapter.

41 7. Not shown that the holder or applicant is a person of honesty,
42 truthfulness and good character.

43 8. Demonstrated incompetence to perform any duty or requirement of a
44 licensee under or arising from this chapter. FOR THE PURPOSES OF THIS
45 PARAGRAPH, "INCOMPETENCE" MEANS A LACK OF BASIC KNOWLEDGE OR SKILL

1 APPROPRIATE TO THE TYPE OF LICENSE THE PERSON HOLDS OR A FAILURE TO
2 APPRECIATE THE PROBABLE CONSEQUENCES OF THE LICENSEE'S ACTION OR INACTION.

3 9. Violated the terms of any criminal or administrative order, decree
4 or sentence.

5 10. Violated any federal or state law, regulation or rule that relates
6 to real estate or securities or that involves forgery, theft, extortion,
7 fraud, substantial misrepresentation, dishonest dealings or violence against
8 another person or failure to deal fairly with any party to a transaction that
9 materially and adversely affected the transaction. This paragraph applies
10 equally to violations of which the licensee was convicted in any lawful
11 federal or state tribunal and to any admissions made in any settlement
12 agreement by the licensee to violations.

13 C. The commissioner may deny, suspend or revoke the issuance of a
14 license upon application by a corporation, a limited liability company or a
15 partnership if it appears that an owner, officer, director, member,
16 manager, partner, stockholder owning ten per cent or more of the stock in
17 the corporation or limited liability company or person exercising control of
18 the entity is a current or former licensee whose license as a broker or a
19 salesperson has been denied, suspended or revoked.

20 D. The lapsing or suspension of a license by operation of law or by
21 order or decision of the commissioner or a court of law or the voluntary
22 surrender of a license by a licensee shall not deprive the commissioner of
23 jurisdiction to do any of the following:

24 1. Proceed with any investigation of or action or disciplinary
25 proceeding against the licensee.

26 2. Render a decision suspending or revoking the license, or denying
27 the renewal or right of renewal of the license.

28 3. Assess a civil penalty pursuant to section 32-2160.01.

29 E. For the purposes of this section: —

30 1. "LETTER OF CONCERN" MEANS AN ADVISORY LETTER TO NOTIFY A LICENSEE
31 THAT, WHILE THE CONDUCT OR EVIDENCE DOES NOT WARRANT OTHER DISCIPLINARY
32 ACTION, THE COMMISSIONER BELIEVES THAT THE LICENSEE SHOULD MODIFY OR
33 ELIMINATE CERTAIN PRACTICES AND THAT CONTINUATION OF THE ACTIVITIES MAY
34 RESULT IN FURTHER DISCIPLINARY ACTION AGAINST THE LICENSEE.

35 2. "Provisional license" means a license that the department issues
36 and that allows a licensee to practice as a salesperson or broker subject to
37 either a consent order as prescribed in section 32-2153.01 or the
38 commissioner's terms, conditions and restrictions.

APPROVED BY THE GOVERNOR APRIL 15, 2002.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 15, 2002.

Passed the House February 4, 2002,

by the following vote: 57 Ayes,

0 Nays, 3 Not Voting

[Signature]
Speaker of the House

[Signature]
Chief Clerk of the House

Passed the Senate April 8, 2002,

by the following vote: 24 Ayes,

0 Nays, 6 Not Voting

[Signature]
President of the Senate

[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

9 day of April, 20 02

at 11:41 o'clock A M.

[Signature]
Secretary to the Governor

Approved this 15th day of

April, 20 02,

at 10:58 o'clock 4 M.

[Signature]
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 15 day of April, 20 02

at 4:28 o'clock P M.

[Signature]
Secretary of State

H.B. 2006